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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ILIANA LOPEZ, on behalf of herself and all others
similarly situated,

Plaintiff,

-against-

RUSTIC RED DOOR, INC.,

Defendant.

1:23-cv-1292-MKV

SECOND ORDER
TO SHOW CAUSE

MARY KAY VYSKOCIL, United States District Judge:

Plaintiff initiated this action by filing a complaint on February 15, 2023. [ECF No. 1.] An affidavit of service of summons and complaint was filed on the docket on March 23, 2023. [ECF No. 5.] According to that summons, Defendant's response to the complaint was due March 27, 2023. [ECF No. 5.] Defendant filed no response, and Plaintiff failed to further prosecute the case.

On May 17, 2023, the Court issued an **Order to Show Cause**, directing Plaintiff to file a letter "showing cause why this case should not be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure" for failure to prosecute. [ECF No. 6.] The Court warned that "Plaintiff is on notice that she is ultimately responsible for prosecuting her case, and this case may be dismissed because of her chosen counsel's failure to prosecute her case." [ECF No. 6] (citing *Link v. Wabash R. Co.*, 370 U.S. 626, 633-34 (1962)).

On May 24, 2023, Plaintiff requested "leave to seek a default judgment within thirty days to allow time for the matter to [be] resolved," which the Court granted. [ECF Nos. 7, 8.] Thereafter, Plaintiff filed a motion for Default Judgment. [ECF No. 9.] The Court subsequently denied Plaintiff's motion **without** prejudice "for failure to comply with this Court's Individual Rules of Practice." [ECF No. 10.] The Court noted that, "[a]mong other things, the motion is not

accompanied by a proposed form of judgment or a proposed order to show cause.” [ECF No. 10] (citing Individual Rules of Practice Attachment A).

On November 16, 2023, the Court issued an Order stating that, “[i]n the almost month and a half since the Court denied Plaintiff’s motion for Default Judgment without prejudice, Plaintiff has not re-filed a proper motion nor further prosecuted her case in any way.” [ECF No. 11.] The Court directed Plaintiff to file, **by November 30, 2023**, “a letter showing cause why this case should not be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure” and “any new motion for Default Judgment.” [ECF No. 11.] The Court put Plaintiff on notice that “she is ultimately responsible for prosecuting her case, and this case may be dismissed because of her chosen counsel’s failure to prosecute her case.” [ECF No. 11.] The November 16 Order further warned Plaintiff that “[f]ailure to comply with the deadlines set forth [in] any [] orders in this case . . . may result in . . . dismissal of claims or defenses.” [ECF No. 11.]


Accordingly, IT IS HEREBY ORDERED that **by December 31, 2023**, Plaintiff shall file a letter showing cause why this case should not be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. Plaintiff is **again on notice** that she is ultimately responsible for prosecuting her case, and that this case may be dismissed because of her chosen counsel’s failure to prosecute the case. *See Link v. Wabash R. Co.*, 370 U.S. 626, 633-34 (1962). IT IS FURTHER ORDERED that any new motion for Default Judgment must be filed **by December 31, 2023**.

Plaintiff is again cautioned that failure to comply with the deadlines set forth herein and any other orders in this case, the local rules, or the Court’s Individual Rules of Practice

may result in sanctions, including monetary penalties, preclusion at trial of information not provided, or preclusion and/or dismissal of claims or defenses.

SO ORDERED.

Date: December 1, 2023
New York, NY



MARY KAY VYSKOCIL
United States District Judge